

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 268****[FRL-4133-5]****Hazardous Waste Management
System: Land Disposal Restrictions****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Notice to Approve Hazardous
Debris Case-By-Case Capacity
Variance.

SUMMARY: In response to the January 9, 1992, Proposed Rule on Land Disposal Restrictions (LDR) for Newly Listed Wastes and Hazardous Debris (see 57 FR 958), EPA received numerous comments regarding the availability of treatment capacity for hazardous debris, including comments from owners and operators of treatment, storage, and disposal facilities (TSDs), state regulatory agencies, Federal agencies, and industry trade associations. Most of the commenters indicated that owners and operators of TSDs will have an extremely difficult, if not impossible, task in obtaining treatment capacity that meets the proposed standards for hazardous debris, or that could meet the existing treatment standards, by May 8, 1992, when the national capacity variance for most debris expires. EPA agrees with these comments, which confirm its own independent study.

Under 40 CFR 268.5, EPA is therefore taking regulatory action to approve today a generic, one-year extension of the LDR effective date applicable to all persons managing hazardous debris. (This document explains more fully which hazardous debris is covered by the extension.) No further applications will be required from persons granted the extension by this action. However, EPA is requiring such persons to do certain recordkeeping, and to meet certain other requirements to qualify for the extension.

EFFECTIVE DATE: This document becomes effective on May 8, 1992.

ADDRESSES: The official record for this notice is identified as Docket Number F-92-CD2P-FFFFF, and is located in the EPA RCRA Docket, room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-8327. The public may copy a maximum of 100 pages from any regulatory document at

no cost. Additional copies cost \$0.20 per page.

FOR FURTHER INFORMATION CONTACT:

For general information contact the RCRA Hotline at (800) 424-9346 toll-free or (703) 920-9810 locally. For information on specific aspects of this notice, contact William Kline, Office of Solid Waste, Capacity Programs Branch (OS-321W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308-8440.

SUPPLEMENTARY INFORMATION:

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I. Background

A. History

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984, which amended the Resource Conservation and Recovery Act (RCRA). Among other things, HSWA required EPA to develop regulations that would impose, on a phased schedule, restrictions on the land disposal of hazardous wastes. In particular, sections 3004 (d), (e), and (g) prohibit the land disposal of all wastes identified or listed as hazardous as of November 1984 unless the wastes are treated (or meet treatment standards) before disposal in a manner that "substantially diminish(es) the toxicity of the waste or substantially reduce(s) the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." The alternative to satisfying these treatment standards is disposal in a unit from which there will be no migration of hazardous constituents for as long as the waste remains hazardous.

In developing such a broad program, Congress recognized that adequate alternative treatment, recovery, or protective disposal capacity (i.e., no-migration disposal units) may not be available by the applicable effective dates. Therefore, section 3004(h)(2) authorizes EPA to grant a national capacity variance (based on the earliest date that such capacity will be available but not to exceed two years) from the effective date which would otherwise apply to specific hazardous wastes. In addition, under section 3004(h)(3), EPA can grant an additional capacity extension of the deadline on a case-by-

case basis for up to one year beyond the applicable deadline.

On June 1, 1990, EPA published a final rule (55 FR 22520) establishing prohibitions and treatment standards for wastes in the final third of scheduled prohibitions. Among other things, the rule established prohibitions and treatment standards for debris contaminated with all hazardous wastes (except for the solvents and dioxins prohibited under section 3004(e)). Because of a lack of treatment capacity, however, EPA granted a two-year national capacity variance for most hazardous debris (40 CFR 268.35(e)). As such, these wastes are prohibited from land disposal on May 8, 1992, unless the treatment standards are met. The existing treatment standards for debris are the same as for the waste with which the debris is contaminated.

B. Revised Treatment Standards for Hazardous Debris

On January 9, 1992, EPA published proposed treatment standards for hazardous debris. These standards would replace the existing standards published in the June 1, 1990 final rule (see 55 FR 22520, June 1, 1990). The final rule has been delayed, due in part to a delay in publishing the proposed rule necessitated by the review process, but is expected to be issued shortly, by June 30, 1992. The Agency intends that the final treatment standards to be promulgated will be similar to those proposed; thus, any differences will likely be irrelevant to this extension.

The Agency received over 130 comments on the January 9, 1992 proposed rule, many expressing that there would be inadequate capacity for hazardous debris as of May 8, 1992. The complexity of the proposed rule, the large volumes of hazardous debris that require treatment, and numerous technical uncertainties with the proposed treatment standards were among the reasons provided by commenters that obtaining immediate capacity is beyond their control and capabilities. Additionally, commenters felt that several years may be required to obtain necessary capacity due to the time needed for design and construction of treatment units and delay necessary to modify or to obtain permits.

EPA has been and continues to be cognizant of the existing capacity shortfall for hazardous debris and agrees that adequate treatment capacity for hazardous debris cannot be provided by the prohibition effective date. As such, it appears that the affected hazardous debris generators need an extension of that date.

Although one commenter specifically suggested that a 90-day case-by-case extension is appropriate, based on all the comments received, and considering the large volumes of hazardous debris that will require treatment, and the logistic delays necessary to comply with the new standards, EPA believes that 90 days will be insufficient for all owners and operators to obtain or utilize treatment capacity.

For the purpose of this extension, the terms debris and hazardous debris are defined as follows:

For this notice, EPA is continuing to use the current definition of debris set out in the preamble to the June 1, 1990 final rule. See 55 FR 22650. This definition includes both organic debris and inorganic solid debris. *Id.* and § 268.2(g). EPA wishes to clarify, however, that the extension adopted today includes more types of debris than granted a national capacity extension in the June 1 rule. In that rule, only inorganic solid debris and other debris contaminated with a waste whose treatment standard was based on incineration, mercury retorting, or vitrification received a variance. In this action, all debris (defined as explained above) which is hazardous, with several exceptions, is receiving an extension. These exceptions include debris contaminated with listed solvent or dioxin waste covered by the section 3004(e) prohibition and debris contaminated with non-liquid "California List Wastes" pursuant to section 3004(d). The time for granting national and case-by-case capacity extensions for these wastes has expired, so that further extension is not possible. 55 FR 22650/2. For all other types of debris which are hazardous, as explained below, the logistic difficulties in obtaining treatment appear to be the same, so EPA is granting the extension for all such debris.

Finally, EPA notes that the final rule to be issued on June 30, 1992 is likely to amend the definition of debris in response to comment on the January, 1992 proposal. EPA will explain in that rule how any such change affects the case-by-case extension promulgated today.

Hazardous Debris means debris that contains a hazardous waste listed in subpart D of part 261 that is subject to the land disposal restrictions of this part, or that exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 that is subject to the land disposal restrictions of this part.

II. Justification for this Extension

A. Demonstration Under 40 CFR 268.5

In this notice, EPA is taking final regulatory action to grant a national case-by-case extension of the effective date for treatment standards for hazardous debris.

40 CFR 268.5 specifies seven demonstrations that must be made for a case-by-case extension of the prohibition effective date to be approved. From the comments and information submitted, EPA has made an evaluation of these seven required demonstrations as follows:

Demonstration 40 CFR 268.5(a)(1).

The applicant must demonstrate that he has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste in accordance with the effective date of the applicable restriction established under subpart C of this part.

A large number of commenters indicated that they are unable at this time to locate and contract with treatment, recovery, or disposal facilities. One commenter, the principal association of hazardous waste treatment and management firms, believes that although EPA's proposed treatment standards appeared to be environmentally protective, it would be impossible to implement as of the rule's effective date. This commenter stated that most of the treatment technologies that have been proposed as BDAT are not widely available currently. After reviewing EPA's data on generation and treatment capacity, and making its own assessment of capacity from member firms, this commenter found a substantial shortfall in the availability of technologies and pointed out that substantial capital investments would be required to bring the BDAT technologies on line.

EPA believes these comments accurately portray the existing availability of capacity for treatment of hazardous debris. Nor is there sufficient capacity to meet existing standards. While there may be isolated capacity to treat limited volumes of such waste in some locations, EPA agrees that there is, in general, very little treatment capacity available, so that generators are unable at this time to locate and contract with treatment, recovery, or disposal facilities.

Demonstration 40 CFR 268.5(a)(2)

The applicant has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery (e.g.,

recycling), or disposal capacity that meets the treatment standards specified in subpart D or, where treatment standards specified in subpart D or, where treatment standards have not been specified, such capacity is protective of human health and the environment.

As pointed out by the commenters, the availability of treatment technologies to meet the proposed treatment standards is very limited and will require substantial capital investment to bring such technology on-line. In fact, until the Agency promulgates the final treatment standards for hazardous debris, it will be difficult for most regulated entities to construct or enter into such contractual commitments. Thus the ability to utilize the technology and ultimately enter a binding contractual commitment to construct or otherwise provide the necessary treatment capacity will be difficult by the LDR effective date. One difficulty in meeting this criterion is largely caused by the revision of the treatment standards so close to the effective date.

EPA believes, however, that there is no ultimate difficulty in constructing or otherwise developing the needed treatment technology because the types of treatment technologies involved all exist and are commonly available given time. Here, where there is little question that the needed treatment can ultimately be provided, the Agency believes that granting the extension is in keeping with the statutory mandate.

EPA is requiring that any generator of hazardous debris who is participating in this extension must make a good faith effort to enter into such a contract at the earliest date practicable to provide the treatment capacity for his hazardous debris. See discussion below.

Demonstration 40 CFR 268.5(a)(3)

Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

The commenters provided numerous examples regarding technical and practical difficulties associated with providing the alternative capacity. EPA believes many of these to be valid concerns and agrees that additional time is needed to resolve these concerns. Further, EPA recognized in both the Advance Notice of Proposed Rulemaking (ANPRM) (see 57 FR 24444, May 30, 1991) and the proposed rule (57

FR 982) that many significant technical issues remained unresolved. EPA believes that these circumstances are beyond the control of the generators who need to treat or dispose of their hazardous debris. In addition, the precise details of the final treatment standards are not available until EPA promulgates a final rule, a circumstance also out of the applicants' control.

Demonstration 40 CFR 268.5(a)(4)

The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application.

The commenters have indicated that they have difficulties in determining at this time the capacity needed for hazardous debris. One commenter stated that the volume of debris generated has been seriously underestimated and that the proposed rule will result in large volumes being regulated under RCRA subtitle C for the first time.

EPA believes that the commenters have shown that these uncertainties make it difficult for many owners and operators from determining their capacity requirements at this time. More important, the key timing concern relates to immediate logistical problems documented in the comments relating to time needed for permit modifications, plus (in some cases) time needed to construct specialized debris treatment units like containment buildings. As noted previously in the discussion of needed contractual commitments, EPA believes that adequate treatment capacity can be provided once these logistical obstacles are overcome.

Demonstration 40 CFR 268.5(a)(5)

He provides a detail schedule for obtaining required operating and construction permits or an outline of how and when alternative capacity will be available.

It will be difficult for owners and operators to provide a detailed schedule for obtaining operating and construction permits if they are unable to determine their capacity needs, the appropriate technology to treat their hazardous debris and the means by which they will obtain access to such technology. In keeping with the 40 CFR 268.5(a)(5) demonstration, EPA is requiring that this demonstration be made by placing this schedule into their facility operating record as required by the conditions of this variance.

Demonstration 40 CFR 268.5(a)(6)

The applicant must demonstrate that he has arranged for adequate capacity to manage his waste during an extension and has documented in the application the location of all sites at which the waste will be managed.

Due to the generic nature of this extension, EPA has little facility-specific information that demonstrates that generators or owners and operators have arranged for adequate capacity to manage their hazardous debris during this one-year extension or the locations at which these wastes will be managed. However, on a nationwide basis, EPA believes that treatment capacity will be available, given time. As discussed below, consistent with 40 CFR 263.5(a)(5), EPA is requiring owners and operators to include documentation in the facility record describing the means by which their hazardous debris will be managed between May 8, 1992 and May 8, 1993.

Demonstration 40 CFR 268.5(a)(7)

Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of paragraph (h)(2) of 40 CFR 268.5.

It is a requirement of this extension (and an absolute legal requirement) that any generator or owner or operator who intends to manage his hazardous debris in a surface impoundment (which is highly unlikely) or landfill during the one-year extension must ensure that the unit meets the requirements of 40 CFR 268.5(h)(2) (see RCRA section 3004(h)(4)). As discussed below, any owner or operator who participates in this one-year extension and intends to use this type of unit(s) must so indicate in the facility record and include certification that such unit(s) meets the requirements of 40 CFR 268.5(h)(2), i.e., meeting the minimum technology requirements set out in that regulation.

B. Consultation With the States

In addition to the above seven demonstrations, EPA is required under 40 CFR 268.5(e) to consult with appropriate State agencies in all affected States. In this case, because of the extremely limited time available, EPA has considered comments already received from two State agencies; these support the need for an extension of the LDR effective date for hazardous debris.

C. Conclusion

Based on its evaluation of the demonstrations required under 40 CFR 268.5, and for the reasons stated above, EPA is approving, a one year extension

to the Land Disposal Restrictions for hazardous debris, which are subject to the national capacity variance for debris. This extension is effective from May 8, 1992 to May 8, 1993. Any such waste disposed after May 8, 1993 will be subject to the LDRs unless the generator obtains a site-specific extension beyond that date. EPA is taking this exceptional regulatory action because of the unique circumstances which have resulted in the lack of treatment, recovery, and disposal capacity for hazardous debris, including the promulgation of revised standards, and EPA's conclusion that treatment capacity meeting those standards is presently extremely limited, or is limited due to logistic problems such as obtaining permit modifications, but can be provided by the end of the extension period.

III. Requirements for this Extension

To receive the benefit of this extension, a generator, or facility owner or operator must include the following information in the facility's operating record by July 8, 1992, or at the time the hazardous debris is generated or treated, whichever is later:

(1) The name, mailing address, location, and EPA identification number (if assigned) of facility. The term "facility" includes any site, whether permanent (such as a manufacturing plant), or temporary (such as a demolition project) where hazardous debris will be generated as of May 8, 1992;

(2) A description of the hazardous debris waste stream, including the RCRA waste code(s); and

(3) Waste generation rates (cu.m./yr.), and estimated inventories (cu.m.) on May 8, 1992, and as of May 8, 1993.

In addition, by July 8, 1992, or at the time the hazardous debris is generated or treated, whichever is later, each owner and operator must maintain in the facility record (or, for generators, in the files maintained pursuant to § 268.7(a)(5)) a written plan that describes how the facility will obtain adequate treatment capacity. At a minimum, this plan must include a schedule of how the owner or operator plans to design, construct, and obtain the necessary permits to provide on-site treatment, recovery, or disposal capacity or a description of the binding contractual commitment for off-site capacity. Also required in the plan is: (1) The method of storage for hazardous debris, storage capacity, and RCRA permit status (i.e., interim status, permitted, or 90-day generator) of the storage unit during the extension period, (2) If management of hazardous debris during the extension includes the use of

a surface impoundment or landfill, the owner or operator must certify that such unit meets the requirements of 40 CFR 268.5(h)(2), and (3) Certification as required under 40 CFR 268.5(b).

This plan must be furnished upon request, and made available at all reasonable times for inspection by any officer, employee, or representative of EPA, or the appropriate State agency who is duly designated by EPA or the State agency.

Under 40 CFR 268.5(e), the Administrator may renew this extension for up to one year beyond the effective date. Any owner or operator who believes that he may need a renewal of this one year extension must submit an application not later than November 8, 1992. The application must address the seven demonstrations in accordance with 40 CFR 268.5, and must justify the requested renewal period. In reviewing an application for renewal of the extension, EPA will closely evaluate the degree to which the applicant has progressed in providing the necessary treatment, recovery, or disposal capacity. For example, an applicant must show that he has made a good-faith effort to obtain treatment capacity and has entered into a binding contractual commitment as required by 40 CFR 268.5(a)(2). As a further measure of progress, EPA also expects that, by that time, an applicant will be able to provide a detailed and final engineering, construction, and permitting schedule in accordance with 40 CFR 268.5(a)(5). If a renewal of today's one-year extension is approved by EPA, an owner or operator could be allowed until May 1994 to construct or otherwise provide the necessary treatment, recovery, or disposal capacity for his hazardous debris.

List of Subjects in 40 CFR Part 268

Administrative practice and procedure, Designated facility, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Penalties, Recycling, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: May 8, 1992.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

**PART 268—LAND DISPOSAL
RESTRICTIONS**

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.35 paragraph (e) is revised to read as follows:

**§ 268.35 Waste specific prohibitions—
Third Third wastes.**

(e) Effective May 8, 1993, debris that is contaminated with wastes listed in 40 CFR 268.10, 268.11, and 268.12, and debris that is contaminated with any characteristic waste for which treatment standards are established in subpart D of this part, are prohibited from land disposal.

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